

HUI O PIKOILOA, an unincorporated association,  
LIANNE CHING, BETTYE HARRIS, RICHARD MCCREEDY, JULIANNE MCCREEDY,  
MCCREEDY, JESSE REAVIS, and GRANT YOSHIMORI  
c/o 45-464 Lipalu Street  
Kaneohe, HI 96744

2020 AUG 26 A 10: 28

INTERVENORS PRO SE

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

IN THE MATTER OF: ) DOCKET NO. A17-804  
)  
HAWAIIAN MEMORIAL LIFE PLAN, ) INTERVENORS' PROPOSED  
LTD., a Hawaii Corporation ) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW, AND  
To Amend The Conservation Land Use ) DECISION AND ORDER;  
District Boundary Into The Urban Land Use ) CERTIFICATE OF SERVICE  
District For Approximately 53.449 Acres Of )  
Land At Kāneʻohe, Island of Oʻahu, State of )  
Hawaiʻi, Tax Map Key: (1) 4-5-003:por.001 )  
\_\_\_\_\_ )

INTERVENORS' PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

Come now GRANT YOSHIMORI, RICHARD MCCREEDY, JULIANNE MCCREEDY, LIANNE CHING, BETTYE HARRIS, AND JESSE REAVIS, Intervenor Pro Se (collectively "Intervenors"), and respectfully submits the following proposed findings of fact, conclusions of law and decision and order to the Land Use Commission of the State of Hawaiʻi (the "Commission") in the above-entitled matter.

On November 13, 2017, the Petitioner HAWAIIAN MEMORIAL LIFE PLAN, LTD. ("Petitioner") filed its petition to amend the State Land Use District boundary to reclassify approximately 53.449 acres of land at Kāneʻohe, Koʻolau Poko, Oʻahu, Hawaiʻi, identified as Oʻahu Tax Map Key No. 4-5-33: por. 01 (the "Petition Area"),

from the State Land Use Conservation ("C") District to the State Land Use Urban ("U") District.

The Land Use Commission of the State of Hawai'i (the "Commission"), having heard and examined the testimony, evidence and arguments of counsel presented during the hearings and the proposed findings of fact, conclusions of law and decision and order filed by Petitioner, and the proposed findings of fact, conclusions of law and decision and order and exceptions and comments filed by the other parties, hereby makes the following findings of fact, conclusions of law and decision and order:

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On November 13, 2017, Petitioner filed a petition for Land Use District Boundary Amendment in this Docket.
2. On November 21, 2017, The Commission agreed to be the reviewing and accepting agency for Petitioner's Chapter 343, HRS, compliance; identified that the project as proposed would likely have significant environmental impacts requiring that an EIS would be required, and directed the Petitioner to prepare and file an EISPN with the State Office of Environmental Quality Control (OEQC).
3. On August 30, 2018, Petitioner simultaneously filed its Draft EIS ("DEIS") with the State OEQC and the Commission.
4. On April 1, 2019, Petitioner simultaneously filed its Final EIS ("FEIS") with the State OEQC and the Commission.

5. On April 23, 2019, the Commission accepted the Final EIS for this Project.
6. On May 10, 2019, Petitioner filed its First Amendment to the Petition for Land Use District Boundary Amendment.
7. On June 19, 2019, Petitioner filed its Second Amendment to the Petition for Land Use District Boundary Amendment.
8. On October 10, 2019, Intervenor Hui O Pikoiloa filed their Petition to Intervene.
9. On November 21, 2019, the Commission granted Hui O Pikoiloa's petition to intervene and to become a party to the proceedings.
10. On January 22, 2020, the Commission conducted hearings on the Petition pursuant to published public notices.
11. Due to the worldwide COVID-19 health crisis, the Commission suspended action on the proceeding until on May 6, 2020, the Commission held a videoconference meeting to extend decision-making for an additional 90 days.
12. On June 9, 10, and 24; July 22; and August 12, 2020 the Commission conducted hearing on this docket. The hearings were conducted using virtual conference technology and the Zoom Webinar platform.
13. On \_\_\_\_\_, \_\_\_\_\_, the Commission acted to adopt findings of fact, conclusions of law and decision and order.

## DESCRIPTION OF PETITION AREA

14. The Petition Area is located at Kāne‘ohe, Ko‘olau Pokò, O‘ahu, Hawai‘i. The Petition Area consists of 53.45 acres and is a portion of a larger parcel of property identified as Tax Map Key (1) 4-5-033: 001. (Pet. Ex. No. 6).

15. The Petition Area is a portion of a larger 164.4 acre parcel of land located immediately north of the Hawai‘i State Veterans Cemetery. About 7.9 acres of Parcel 1 consists of HMP’s existing Ocean View Garden section. (Pet. Ex. No. 6).

16. There are two roadway entrances along Kamehameha Highway providing vehicular access into and out of the existing HMP site. HMP’s main entrance road, which is shared by the Hawai‘i State Veterans Cemetery, is located across of Halekou Road. (Pet. Ex. No. 4, Page 1-12).

17. The average annual rainfall in the Petition Area is about 53.8 inches per year. Winds are predominantly “trade winds” from the east-northeast (Pet. Ex. No. 6, Page 3-1).

18. The Petition Area generally slopes in a northwest direction from the hillside toward the Pikoiloa subdivision. Site elevations range from 180 feet above mean sea level (AMSL) to 420 feet AMSL. (Pet. Ex. No. 6, Page 3-3).

19. The University of Hawai‘i Land Study Bureau’s *Detailed Land Classification for the Island of O‘ahu* classifies the Petition Area lands are rated



“D” and “E” indicating area lands are poorly suited for agricultural use. (Pet. Ex. No. 6, Fig 4.5).

20. The State Department of Agriculture’s Agricultural Lands of Importance to the State of Hawai‘i (“ALISH”) classification system classifies a small corner of the northwest corner of the Petition Area is classified as “Prime Land.” However, no improvements are planned for this corner site. A section of the northeast portion of the Petition Area is classified as “Other Lands.” This area includes the eastern end of the cemetery’s expansion, and a large portion of the Cultural Preserve. The majority of the Petition Area was excluded from the ALISH classification process. (Pet. Ex. No. 6, Page 4-69 Fig. 4.6).

21. According the Federal Emergency Management Agency (FEMA) flood hazard area classification, the Petition Area is predominantly within Zone D. Small portions of the Petition Area adjacent to residences along Lipalu Street are designated Zone X. Zone D indicates areas of undetermined flood hazard where flooding is possible, and Zone X indicates areas outside the 500-year flood (Pet. Ex. No. 6, Page 3-25).

#### PROPOSAL FOR RECLASSIFICATION

22. Petitioner seeks to reclassify the Property to the State Land Use Urban District to allow the Project. Petitioner is proposing the following: 1) Cemetery Expansion Area (28.20 acres); 2) Cultural Preserve (14.50 acres); 3) Internal Roadways (approximately 3.00 acres); and 4) Other Open Space Area (approximately 7.75 acres) (Petition Page 37).

23. Petitioner anticipates that Project will be substantially completed within ten (10) years after the date of the Commission's approval. (Petition Page 38)

#### PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

24. Development costs for the cemetery construction are estimated at \$29.3 million (in 2018 dollars). (Pet. Ex. No. 6 Page 2-50 and Pet. Ex. No. 29 Page 4).

25. Hawaiian Memorial Life Plan, Ltd was purchased by a subsidiary of Service Corporation International ("SCI"), the largest cemetery and funeral provider in the world. (Pet. Ex. No. 30 Page 2).

26. Petitioner provided conflicting testimony on the potential gross revenues from the conservation-zoned area. Petitioner said they could potentially gross from \$115 million (Holliday Tr. June 9, 2020 147:2-5), excluding revenue from the sale of cemetery plots (Holliday Tr. June 9, 2020 149:17-25); to over \$500 million from sales and operations from the petition area (Ezer Tr. June 9, 2020 96:21-97:6). Petitioner was unable to say what percentage of revenue from the sale of cemetery plots would remain in Hawaii. (Holliday Tr. June 9, 2020 149:21-25).

#### STATE AND COUNTY LAND USE PLANS AND PROGRAM

27. The Petition Area is currently designated in the State Land Use Conservation ("C") District, as shown on the Commission's land use district maps (Pet. Ex. No 6 Fig 6.1).

28. The Petition Area is specifically located within the Conservation District. The Petition Area is within the General (76%) and Limited (24%) Subzones. (Pet. Ex. No 6 Page 6-1).

29. The existing HMP site and Veterans Cemetery are designated as "Preservation Areas" by the Ko'olaupoko Sustainable Communities Plan's Land Use Map, and are within the "Community Growth Boundary." (Pet. Ex. Nos. 6; City. Ex. *Ko'olaupoko Sustainable Communities Plan* ).

30. The Ko'olaupoko Sustainable Communities Plan states that "Any proposed expansion by Hawaiian Memorial Park must include a 150-foot buffer from residential homes, a 2,000-foot buffer from the Pohai Nani senior living community ". (City. Ex. *Ko'olaupoko Sustainable Communities Plan, Page 3-19*).

31. Councilmember Kymberly Pine submitted letter to the State Land Use Commission stating, "The Council's intent was to set the buffer at 2000 feet from the Pohai Nani property line, and 150 feet from the residential property line". (Int. Ex. 7)

32. The Proposed development violates the Ko'olaupoko Sustainable Communities Plan requiring a 2,000-foot buffer from the Pohai Nani senior

living community. “The proposed expansion is only about 1,350 feet away from the Pohai Nani senior living community when measured from the Pohai Nani parcel boundary and about 1,700 feet from the Pohai Nani residential tower. In addition, as the 2,000 foot buffer guidelines was established to address concerns of the Pohai Nani community with respect to the proximity of burials to their residences, the proposed cultural preserve where traditional Hawaiian burials are being sought is only 1,400 feet from the Pohai Nani tower.” (Pet. Ex. 6 Appx A-2, Dina Wong letter)

33. “The Ko‘olaupoko Sustainable Communities Plan has a condition about limitations of above-grade structures to markers of modest size and necessary support structures. The gazeboes for the cemetery expansion is not in keeping with that provision” (Sokugawa Tr. June 24,2020,215:11-15).

#### NEED FOR THE PROPOSED DEVELOPMENT

34. Petitioner’s market study overstated burial plot demand through 2040 (Pet. Ex. 6 Appx B), by the following:

a). Petitioner’s corrected market study (Pet. Ex. 59) shows a SURPLUS of 2,058 plots on O‘ahu through year 2040. Petitioner’s revision corrected the original market study by reducing the Projected Number of Burials through 2040 from 75,402 (Pet. Ex. 6 Appx B, Pg.34) to 33,819 (Pet. Ex. 59, Table 12); this reduces the estimated burial space demand by 41,583 burial spaces. The originally estimated shortage of 39,525 burial plots (Pet. Ex. 6, Appx B, Page



40) less the corrected demand of 41,583, results in a surplus of 2,058 plots through 2040.

b). The Petitioner's corrected market study further overstates plot needs as it used an assumption of one person per burial plot (Holliday, Tr. June 9, 2020, 121:11-14), however, HMP's policy is to allow 2 caskets or 4 urns per plot (Morford, Tr. June 9, 2020 217:1-9), and O'ahu cemetery allows 20 urns per plot (Pet. Ex. 6 Appx A2 Letter to Mr. McCreedy).

35. About 37% of the Petitioner's burial plots are unused. Petitioner stated that as of 2018, Petitioner has 4,500 unsold plots. (Pet. Ex 6 Page 2-11). Petitioner has also stated that they have about 25,000 burial spaces purchased, but unused (Pet. Ex 6 Appx B, Page 32). Petitioner stated they have approximately 79,000 total individual plots (Pet. Ex. 6 Page 2-11).

36. Petitioner can extend existing burial plot supply by increasing density. Petitioner's market study stating HMP's expansion need, assumed one person per burial plot (Holliday, Tr. June 9, 2020, 121:11-14), however, HMP allows 2 caskets or 4 urns per plot (Morford, Tr. June 9, 2020 217:1-9), with the ability to go to 24 urns per burial plot. (Morford, Tr. June 9, 2020, 219:10-13); and in one case, Petitioner allowed 40 inurnments on top of the gravesite (Morford, Tr. June 9, 2020, 220:6-13).

37. Petitioner limits the number of people per plot by internal company policy, not by State or legal requirements. (Morford, Tr. August 12, 2020,102:11-17).

38. The expansion proposed by Petitioner for additional grave sites does not necessarily need to be provided within the Petition Area as Petitioner's planning and land use expert witness stated he could not preclude that there would be other properties somewhere else on O'ahu that would be suitable for cemetery development. (Ezer, Tr., June 9, 2020, 56:9-11).

#### PUBLIC OPINION

39. The online petition to the Land Use Commission (Int. Ex. 1) has gathered over 2,900 signatures to date (<https://www.change.org/p/state-of-hawaii-land-use-commission-save-kaneohe-conservation-land-from-graveyard-expansion>).

40. The Land Use Commission's website has posted 36 public written testimonies AGAINST the expansion and has 15 public testimonies in favor of the expansion.

#### IMPACT ON RESOURCES OF THE AREA

##### Flora and Fauna

41. The petition area contains eight indigenous and three endemic plant species. (Pet. Ex. 6 Appx E, Pet. Ex. 6 , Appx K Page 16).

42. Of the Petition Area's total 53.45 acres, 33.6 acres containing original flora forest will be removed by grading. (Pet. Ex. 6, Pg. 2-31).

43. The Proposed Action would significantly alter the present botanical characteristics of the area proposed for the cemetery's expansion because this site would undergo extensive grading activities (cut/fill). (Pet. 2<sup>nd</sup> Amendment to DBA, Pg. 11).

44. Native plant populations that include the Ohi'a Lehua and Ka'e'e populations would be displaced due to grading activities. (Pet. 2<sup>nd</sup> Amendment to DBA, Pg. 13).

45. The endangered Hawaiian hoary bat may be present in the Petition Area. Construction activities during the clearing and grubbing phase of construction may displace individual bats that use vegetation for roosting. (Pet. Ex 6, Page 3-51).

46. The petition area contains a habitat for the Federally listed endangered Blackline Hawaiian Damselfly. (Pet. Ex. 6, Pg. 3-53).

47. The Blackline Hawaiian Damselfly was placed on the Federal Register for endangered and threatened wildlife and plants on 2012 (Int. Ex. 10).

48. It is estimated that there are only about 800 to 1000 individual Blackline Hawaiian Damselfly remaining in the world, living in 17 streams of

the Ko'olau Mountains (Int. Ex. 10, Pg. 57655, Para. 3; Montgomery, Tr. June 10, 2020, 114:6-10).

49. Petitioner has proposed measures to protect the damselfly habitat, which include incorporation of subsurface drains designed in a herringbone pattern to ensure continued water supply to the seep; and continued inspection of the seep to ensure waterflow is occurring; additionally, a well monitoring gauge or an appropriate alternative device would be installed in the well upslope from the seep to monitor water levels before, during, and after project construction. A permanent irrigation line extending from the cemetery expansion area irrigation system would also be installed. If the gauge indicates water levels have declined to levels potentially affecting the seep, water from the irrigation line could be provided to the well to stabilize water levels. (Pet. Ex. 6 Pg. ES-7).

50. There has been no determination nor agreement of which entity (Petitioner, holder of the conservation easement, or the proposed cultural manager) will be responsible for maintaining the adequate water level in the damselfly habitat (Nance, Tr. June 9, 2020, 190:20-191:6).

51. Petitioner stated that the management and conservation of the seep habitat may be appropriate for the civic club to manage, but this has not been discussed with the civic club (Morford, Tr. June 9, 2020, 222:4-18)

52. The U.S. Fish and Wildlife Service (FWS) is concerned that the extent and depth of slope grading, trenching, and filling upslope of the



endangered damselfly habitat has the potential to alter the local hydrology, potentially reducing or eliminating the outflow from the small spring on which the damselfly population depends. (OP Ex. 6, Pg. 1)

53. FWS also stated that much of the proposed terrain reconfiguration lies immediately upslope of the habitat supporting the population of the ESA-listed blackline Hawaiian damselfly, and that any impacts of such activities to the local hydrology feeding the spring would be immediately detrimental to the potential long-term survival of the population. (OP Ex. 6, Pg. 4).

54. The Blackline Damselfly is a specialist on dark shady habitats (Montgomery, Tr. 6/10/2020, 121:3-4) and likely use a couple of acres of the existing Petition Area. (Montgomery, Tr. 6/10/2020, 120:10-13); however, the Petitioner will grade the areas, leaving only a 164-foot buffer surrounding the Blackline Damselfly seep (Pet. Ex. 55).

55. The State Office of Planning's recommended mitigations for the Damselfly population, has not been reviewed nor approved by the U.S. Fish and Wildlife Service (Funakoshi Tr. July 22, 2020 25:3-5).

56. Should the District Boundary Amendment be denied, the Petitioner is willing to coordinate with the DLNR and the U.S. Fish and Wildlife Service on appropriate cost-effective measures to ensure the protection of the damselfly. (Morford Tr. August 12, 2020, 115:22-117:1).

Archaeological/Historical Resources

57. The Archeological Inventory Survey identified 24 historic sites. Documented traditional Hawaiian sites include heiau, potential ceremonial sites, habitation sites and complexes, terraced hillsides, and terraced 'auwai. Heiau and potential ceremonial sites include Kawa'ewa'e Heiau, a walled enclosure, a hilltop with associated stone alignments, and a potential Hale o Papa. (Pet. Ex. 6 Appx J, Pg. 52).

58. Nine of the sites are within the proposed area for cemetery expansion and will be destroyed by grading. (Thurman, Tr. 6/24/2020 32:20-23)

59. The Ko'olaupoko Hawaiian Civic Club has traditional and customary practice rights to the heiau complex. (Watson Tr. 6/24/2020, 68:8-14).

60. The Petitioner is obligated to allow access to the area to the Ko'olaupoko Hawaiian Civic under the Hawai'i State Supreme court case *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*. (Watson Tr. 6/24/2020, 68:15-18).

61. Without the District Boundary Amendment, Cultural Practitioners would be able to maintain the cultural and historic resources under the current allowable uses of the General Conservation District §13-5 HAR.

*§13-5-22 HAR P-4 (A-1) "Removal of invasive species including chemical and mechanical control methods, not to exceed one acre"*

*§13-5-22 HAR P-4 (B-1) "Removal of invasive species including*

*chemical and mechanical control methods, in an area greater than one acre”*

*§13-5-22 HAR P-8 (A-1) “Minor repair, maintenance, and operation to an existing structure, facility, use, land, and equipment, whether it is nonconforming or permitted, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource. Any repair, strengthening, reinforcement, and maintenance of a fishpond shall be in accordance with section 183-44 and 183B-2, HRS.”*

*§13-5-22 HAR P-13 (B-1) “Basic land management, including routine weed control, clearing of understory, and tree pruning, utilizing chemical and mechanical control methods, which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area greater than one acre.”*

*§13-5-22 HAR P-13 (B-2) “Planting of native and endemic plants and fence maintenance. New fence ex-closures for native plants or small native wildlife communities, in an area greater than one acre.”*

62. Should the District Boundary Amendment be denied, the Petitioner would allow the civic club to be at the Kawa’ewa’e Heiau to do whatever they wanted to do (Morford Tr. August 12, 2020, 115:16-20), and would also permit access through the cemetery to community members who wanted to access the heiau (Morford Tr. August 12, 2020, 117:2-6)

63. Petitioner has begun meetings with the Ko’olaupoko Hawaiian Civic Club to plan for an establishment of a cultural preserve, which would include 100 native Hawaiian burial spaces. (Pet. Ex. 26).

64. The AIS did not find existing burials and the probability of existing burials in the proposed cultural preserve is low, and there have been no previously documented burials in the mountain slopes. (Thurman Tr. 6/24/2020 39:7-40:4).



65. Traditional Hawaiian burials do not involve major grading or other significant site disturbance (Pet. Ex 6, Pg. 3-14). The only reason the cultural preserve is a part of the Petition is to allow for the traditional Hawaiian burial. (Watson Tr. 6/24/2020 58:14-20). Instead, a Conservation District Use Permit via §13-5-31 HAR, would allow cultural practitioners to perform traditional Hawaiian burials without a District Boundary Amendment.

66. There is no agreement on apportionment of liability and responsibility between the Petitioner and the Ko‘olaupoko Hawaiian Civic Club (Morford Tr 8/12/2020, 123:4-8).

67. If the district boundary amendment is not granted, the Petitioner will continue to allow the civic club and community members to access Kawa‘ewa‘e Heiau (Morford Tr. 8/12/2020 115:16-20; 117:2-6)

68. In *Ka Pa‘akai O Ka ‘Aina v. Land Use Commission*, 94 Haw. 31, 7 P. 3d 1068 (2000) the Hawai‘i Supreme Court held that Article XII, Section 7, of the Hawai‘i State Constitution obligates the Commission to protect the reasonable exercise of Native Hawaiian customary and traditional practices to the extent feasible when granting a petition for district boundary amendment. In the ruling under Discussion B.2., the Court established the following three-prong test:

*In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the LUC, in its review of a petition for reclassification of district boundaries, must - at a minimum - make specific findings and conclusions as to the following:*  
*(1) the identity and scope of "valued cultural, historical, or natural*



*resources" in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources - including traditional and customary native Hawaiian rights - will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.*

[94 Hawai'i at 47,7 P.3d at 1084.]

69. Petitioner has said that they have not determined who can be buried in the heiau complex, nor the application process for burial (Watson, Tr. June 24, 2020 71:19-72:13).

70. In the Ka Pa'akai O Ka 'Aina decision, Discussion B.4., the Court stated that the LUC's verbatim adoption of the Petitioner's conceptual Resource Management Plan without any analysis of project's impact violated the LUC's duty to independently assess the impacts of the proposed reclassification on such customary and traditional practices.

71. The Petitioner has stated that they have not started the management plan but are having ongoing discussion about the appropriate practice. (Watson Tr. June 24, 2020 73:9-12). The Petitioner has not provided a management plan, nor a CONCEPTUAL management plan to the Commission, stating the preservation and management plan will be drafted post LUC hearings by the Ko'olaupoko Hawaiian Civic Club and Petitioner (Watson Tr. June 24, 2020, 73:15-21). As such, the Commission will be unable to independently assess the impacts of the proposed reclassification on customary and traditional practices as ruled in Ka Pa'akai O Ka 'Aina.

72. In the Ka Pa'akai O Ka 'Aina decision, Discussion B.3., the Court stated that Commission did not address native Hawaiian rights or cultural resources OUTSIDE of the Petitioner's proposed management area. While Petitioner has stated that the preservation plan will cover areas outside the proposed Cultural preserve; the Petitioner has not provided a preservation, nor management plan (Watson Tr. 6/24/2020 66:1-15), for the Commission to review.

73. The Petitioner has proposed placing a conservation easement on the petition area. (Pet. Ex. 61).

74. However, there is currently no agreed terms and conditions for a Conservation Easement with the Hawaiian Islands Land Trust (HILT) (Ezer, Tr. 1/22/2020, 199:16-20). Any terms of the Conservation Easement would be subject to approval by HILT's board of directors (Pet. Ex. 25)

75. There is no agreement on funding by the Petitioner for expenses incurred for the management of the cultural preserve by the managing body. (Watson Tr. 8/12/2020 107:1:10).

#### Visual Resources

76. This site would undergo extensive grading activities (cut/fill). (Pet. 2nd Amendment to DBA, Pg.11). The project includes grading of 33.6 acres (Pet. Ex. 6, Pg. 2-31), and a majority of the western hillside will be excavated to achieve height reductions between 40 and 100 feet (Hirota Tr. June 10, 2020 37:17-22).

77. Petitioner states that the project would alter the Petition Area's present visual appearance and forest character, but that this change would not have an adverse effect on existing views and viewing locations identified. Petitioner also states that the landscaped and open space character of the expanded cemetery would complement the existing HMP and Hawai'i State Veterans Cemetery already present within the backdrop of the larger Oneawa hillside, and that in comparison to other potential urban developments, such as residences or commercial uses, would create a greater visual change and contrast in character (Pet. Ex. 6, Pg. 4-98). However, Petitioner's expert witness (on planning and land use) admitted that visual analysis is subjective. (Ezer, Tr., June 9, 2020, 94:1-2).

78. The Petitioner's Environmental Impact Statement only provides four "after" street-level views of the petition area. One is from the Pali Lookout; two from the HMP Kamehameha Highway entrances; one from the lower elevation in the Pikoiloa subdivision.

## ENVIRONMENTAL QUALITY

### Noise

79. OSHA guidelines for work environments has regulations which state that for eight hours of continuous sound level at 85dBA, they recommend starting a hearing conservation program or monitoring, at 90 dBA for an eight hour continuous day as an average exposure, hearing protection is recommended (Beiler Tr. June 10, 2020, 206:16-21).

80. The predicted construction noise levels at nearby residences predict noise levels exceed the OSHA guidelines of 85 dBA (Pet. Ex 41, Exhibit TB-A). Petitioner did not do a prediction of sound levels with mitigation (Beiler Tr. June 10, 2020, 205:9-11).

#### Air Quality

81. There would be short term air quality impacts resulting from the Proposed Project, resulting from fugitive dust emissions from construction activities and vehicle movement, along with exhaust emissions from equipment and movement of construction equipment. (Pet. Ex. 6, ES-11)

#### Rockfall Hazard and Slope Stability

82. The Petition Area is specifically located within the Conservation District. The Petition Area is within the General (76%) and Limited (24%) Subzones. (Pet. Ex. No 6 Page 6-1).

83. A majority of the proposed expansion area has soils with slopes between 30% to 65%, or slopes between 40% to 70% (Pet. Ex. 6 Fig. 3.3; Pet. Ex. 6, Fig 3.1)

84. Geolabs, Inc. prepared a Potential Rockfall and Slope Hazard Assessment (Pet. Ex. 6, Appx C).

85. In Geolabs' rockfall simulation for the Cultural Preserve area (Slope Profile E), approximately 86% of the simulated rockfalls involving boulders of 3 and 5 feet in dimension could pass below the Preserve's upslope



area. (Lim Tr. January 22, 2020 222:23-223:2; Pet. Ex. 34, Pgs. 2-3). The only proposed mitigation for this area is rockfall hazard warning signage (Lim Tr. 223:13-16; Pet. Ex 34, Pg. 3)

86. Walking trails will be included within the cultural preserve (Thurman, Tr. June 24, 2020, 33:1-5; Pet. Ex. 6, Appx J, Pg. 1).

87. In Geolabs' rockfall simulation for the cemetery area, Geolabs' performed four slope profiles. Slope Profile A indicates that approximately 64% to 66% of simulated rockfall involving boulders 3 and 5 feet in dimension could enter the upslope boundary of the area. Slope Profile D indicates that about 8% to 9% of simulated rockfall could enter the cemetery expansion area. Mitigation for Slope Profile A is the construction of an approximately 1,000-linear foot concrete-lined rockfall catchment ditch. (Pet. Ex. 34, Pg.3)

88. Geolabs stated that there are no guarantees in the professional engineering design fields with respect to protection from rockfall hazard, and Petitioner's expert witness was not willing to guarantee that people aren't going to get hurt. (Lim, Tr. January 22, 2020, 224:1-13; Pet. Ex. 6. Appx C Pg. 22)

89. There is no agreement on liability for claims arising from bodily injury or death from rockfall amongst the Petitioner, the conservation easement holder, or the manager of the cultural preserve. (Morford, Tr. June 10, 2020, 9:3-19)

## Water Quality

90. The Petition Area is within the Kāwā stream watershed (Pet. Ex. 6 Appx O Pg. 2). In addition, portions of the Lipalu Channel are likely Federal Jurisdictional Waters under both the Clean Water Rule and the re-codified pre-existing Clean Water Act rules as it is a tributary to Kāwā stream, which discharges into Kāne'ohē Bay (Pet. Ex. 37 Pg. 5).

91. The preliminary engineering report states that during construction sediment basins designed for a 2-year, 24-hour storm will be used, which will be insufficient should a storm of greater intensity occurs during the 12 to 16-month anticipated construction period. Construction will likely be ongoing through at least one rainy season if not two. (Higham Tr. 7/22/2020, 127:16-24)

92. During construction, there is risk of sediment runoff to Kāwā Stream and Kāne'ohē Bay. (Higham Tr. 7/22/2020 128:6-10)

93. During construction phase of the project, if there were an event exceeding the two-year 24-hour storm basin capacity, it would increase the TMDL load from the project site to Kāwā Stream. (Spengler, Tr. 6/10/2020, 161:1-7).

## ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Drainage

94. The Preliminary Engineering Report (Pet. Ex. 6, Appx D) states there will be a four percent reduction in the water runoff rate, measured in cubic

feet per second; and a five-and-a-half percent reduction in the runoff volume , measured in cubic-feet (Higham Tr. July 22, 2020, 130:15-24). With two corrections made to the runoff rates and runoff volumes as proposed by the Intervenor's expert Civil Engineer witness, the correction would result in little if any reduction in the Petitioner's original calculated post development runoff. (Higham Tr. July 22, 2020, 142:12-19)

95. The proposed petition area is reported to have a drainage tributary of 93.2 acres (Pet. Ex. 6, Appx D, Pg. 7). The Preliminary Engineering report used the Rational Method to calculate the runoff flows as stated by the City and County of Honolulu drainage standards (Hirota, Tr. 44:22-24). Had the proposed petition area been only 7 acres larger, the City and County would require using Plate 6 to calculate the runoff. Using Plate 6 to calculate the runoff flow (i.e if the project were 7 acres larger), **the calculated runoff would be five times higher** than the calculation from the Rational Method submitted by the Petitioner. (Int. Ex. Witness Testimony 4, Pg. 3).

96. There is insufficient information about the proposed retention / detention basins to determine if they are sufficient to protect the downstream homes. (Higham Tr. July 22, 2020, 142:20-24)

97. The currently planned retention/detention basins could possibly be filled within two minutes. Once filled, the basins will act as if they are not there. (Higham Tr. July 22, 2020 137:20-138:25).

98. The proposed retention / detention basins are designed for a 100-year, one-hour duration storm event of 4.5 inches (Pet. Ex 6, Pg. 3-95). This design is not reasonable, as it does not account for rain before and after the one-hour storm event, however, if there is such an extreme thunderstorm, there will be rain before and after that hour. The design should plan for a 24-hour rainfall event at a minimum. A 100-year, 24-hour rainfall event would equate to 15 inches. (Businger Tr. August 12, 2020 56:1-57:12).

99. The planned retention / detention basin volumes are insufficient as they are designed for a 4.5-inch rainfall. They should be designed for a 15-inch rainfall. (Businger Tr. August 12, 2020 57:13-23).

100. Hawai'i can expect to see more frequent and intensive events with rainfalls exceeding 4.5 inches in one hour. The scientific research is clear that there is an increase in heavy rainfall events, resulting in the recurrence intervals getting smaller. We have seen unprecedented rainfall events that happen in the Hawaiian Islands, such as the Kauai flood of 50 inches in 24 hours. (Businger Tr. August 12, 2020 57:25- 58:13)

101. The project as currently proposed puts downstream homeowners at an increased risk when a large or concentrated storm hits the area (Higham Tr. July 22, 2020 143:11-15).



CONFORMANCE TO URBAN DISTRICT STANDARDS

102. The subject property does NOT conform to the standards for lands in the State Land use Urban District set forth in section §15-15-18 HAR in the following respects:

*(3) It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects;*

Flooding is possible in the petition area, as a majority of the petition area is in the Zone D, or “undetermined” FIRM Flood Zone, where “flooding is possible” (Pet. Ex. No. 6, Pg. 3-25).

The project as currently proposed puts downstream homeowners at an increased risk when a large or concentrated storm hits the area (Higham Tr. July 22, 2020 143:11-15).

In Geolabs’ rockfall simulation for the Cultural Preserve area (Slope Profile E), approximately 86% of the simulated rockfalls involving boulders of 3 and 5 feet in dimension could pass below the Preserver’s upslope area. (Lim Tr. January 22, 2020 222:23-223:2; Pet. Ex. 34, Pgs. 2-3). The only proposed mitigation for this area is rockfall hazard warning signage (Lim Tr. 223:13-16; Pet. Ex 34, Pg. 3)

*(8) It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public’s interests in the aesthetic quality of the landscape.*

A majority of the proposed expansion area has soils with slopes between 30% to 65%, or slopes between 40% to 70% (Pet. Ex. 6 Fig. 3.3; Pet. Ex. 6, Fig 3.1). If these lands are used as part of the Project, they would include grading of 33.6 acres (Pet. Ex. 6, Pg.2-31), and a majority of the western hillside will be excavated to achieve height reductions between 40 and 100 feet (Hirota Tr. June 10, 2020 37:17-22).

Also, there is no immediate need for the Project at this time, as Petitioner's corrected market study shows a SURPLUS of 2,058 plots on O'ahu through year 2040 (Pet. Ex. 59).

#### CONFORMANCE TO CONSERVATION DISTRICT STANDARDS

103. The subject property does conform to standards for the State Land Use Conservation District set forth in section §15-15-20 HAR in the following respects:

*(1). "It shall include lands necessary for protecting watersheds, water resources, and water supplies;"*

The Petition Area is within the Kāwā stream watershed (Pet. Ex. 6 Appx O Pg. 2). In addition, portions of the Lipalu Channel are likely Federal Jurisdictional Waters under both the Clean Water Rule and the re-codified pre-existing Clean Water Act rules as it is a tributary to Kāwā stream, which discharges into Kāne'ohe Bay (Pet. Ex. 37 Pg. 5), thus conforming to the need to protect watersheds and water resources.

*(2). "It may include lands susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention by the state and federal government, and lands necessary for the protection of the health and welfare of the public by reason of the land's susceptibility to inundation by tsunami and flooding, to volcanic activity, and landslides;"*

Flooding is possible in the petition area, as a majority of the petition area is in the Zone D, or "undetermined" FIRM Flood Zone, where "flooding is possible" (Pet. Ex. No. 6, Pg.3-25).

There is risk of rockfall in the Petition Area. In Geolabs' rockfall simulation for the Cultural Preserve area (Slope Profile E), approximately 86% of the simulated rockfalls involving boulders of 3 and 5 feet in dimension could pass below the Preserver's upslope area. (Lim Tr. January 22, 2020 222:23-223:2; Pet. Ex. 34, Pgs. 2-3).

There is insufficient information about the proposed retention / detention basins to determine if they are sufficient to protect the downstream homes from flooding. (Higham Tr. July 22, 2020, 142:20-24)

As this land is susceptible to both flood and rockfall hazard, and is necessary for the protection of the health and welfare of the public.

*(4). "It shall include lands necessary for the conservation, preservation, and enhancement of scenic, cultural, historic, or archaeological sites and sites of unique physiographic or ecologic significance;"*

The Archeological Inventory Survey identified 24 historic sites.

Documented traditional Hawaiian sites include heiau, potential ceremonial sites, habitation sites and complexes, terraced hillsides, and



terraced 'auwai. Heiau and potential ceremonial sites include Kawa'ewa'e Heiau, a walled enclosure, a hilltop with associated stone alignments, and a potential Hale o Papa. (Pet. Ex. 6 Appx J, Pg.52).

Nine of the sites are within the proposed area for cemetery expansion and will be destroyed by grading. (Thurman, Tr. 6/24/2020 32:20-23)

Thus, this the land is necessary for the conservation, preservation, and enhancement of scenic, cultural, historic, or archaeological sites.

*(5) " It shall include lands necessary for providing and preserving parklands, wilderness and beach reserves, for conserving natural ecosystems of indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered, and for forestry and other related activities to these uses;"*

The endangered Hawaiian hoary bat may be present in the Petition Area.

Construction activities during the clearing and grubbing phase of construction may displace individual bats that use vegetation for roosting. (Pet. Ex 6, Page 3-51).

The petition area contains a habitat for the Federally listed endangered Blackline Hawaiian Damselfly. (Pet. Ex. 6, Page 3-53).

The petition area also contains eight indigenous and three endemic plant species. (Pet. Ex. 6 Appx E, Pet. Ex. 6, Appx K Page 16).

Thus, this land is necessary for providing and preserving parklands, wilderness, and beach reserves, for conserving natural ecosystems of indigenous or endemic plants, fish, and wildlife



104. The subject property also conforms to standards set forth in section §13-5-12 HAR for the Conservation District Limited Subzone, whose objective is to limit uses where natural conditions suggest constraint.

*(b) The subzone shall encompass (1) land susceptible to floods and soil erosion and (2) lands necessary for the protection of the health safety, and welfare of the public by reason of the land's susceptibility to inundation by tsunami, flooding, volcanic activity or landslides, or which have a general slope of forty percent or more.*

24% of the petition area is within the limited subzone (Pet. Ex. No 6, Pg.6-1). Also, in Geolabs' rockfall simulation for the Cultural Preserve area (Slope Profile E), approximately 86% of the simulated rockfalls involving boulders of 3 and 5 feet in dimension could pass below the Preserve's upslope area. (Lim Tr. January 22, 2020 222:23-223:2; Pet. Ex. 34, Pgs. 2-3).

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAI'I STATE PLAN

Hawai'i State Plan

105. The reclassification of the Petition Area does not conform to the following applicable goals, objectives:

**HRS §226-11 Objectives and policies for the physical environment-land based, shoreline and marine resources.**

*Policy: 11(b)(1) Exercise an overall conservation ethic in the use of Hawaii's natural resources.*

The petition is contrary to this policy because the petition area is currently designated in

the Conservation District and being requested to be converted to the Urban District. The proposed plan requires the grading and deforestation of 33.6 acres (Pet. Ex. 6, Pg.2-31).

*Policy: 11(b)(2) Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.*

During construction phase of the project, if there were an event exceeding the two-year 24-hour storm basin capacity, it would increase the TMDL load from the project site to Kāwā Stream. (Spengler, Tr. 6/10/2020, 161:1-7).

*Policy: 11(b)(6) Encourage the protection of rare or endangered plant and animal species and habitats native to Hawai'i.*

The petition is contrary to this policy as the proposal would alter the habitat of the endangered Hawaiian hoary bat and the endangered Blackline Hawaiian damselfly. The endangered Hawaiian hoary bat may be present in the Petition Area. Construction activities during the clearing and grubbing phase of construction may displace individual bats that use vegetation for roosting. (Pet. Ex 6, Page 3-51). 1. FWS also stated that much of the proposed terrain reconfiguration lies immediately upslope of the habitat supporting the population of the ESA-listed blackline Hawaiian damselfly, and that any impacts of such activities to the local hydrology feeding the spring would be immediately detrimental to the potential long-term survival of the population. (OP Ex. 6, Pg.4).

**HRS §226-12 Objective and policies for the physical environment--scenic, natural beauty, and historic resources.**

*Policy: 12(b)(1) Promote the preservation and restoration of significant natural and historic resources.*

*12(b)(4) Protect those special areas, structures, and elements that are an integral and functional part of Hawaii's ethnic and*

*cultural heritage.*

The Archeological Inventory Survey identified 24 historic sites. Documented traditional Hawaiian sites include heiau, potential ceremonial sites, habitation sites and complexes, terraced hillsides, and terraced 'auwai. Heiau and potential ceremonial sites include Kawa'ewa'e Heiau, a walled enclosure, a hilltop with associated stone alignments, and a potential Hale o Papa. (Pet. Ex. 6 Appx J, Pg.52).

This project is contrary to this policy as nine of the sites are within the proposed area for cemetery expansion and will be destroyed by grading. (Thurman, Tr. 6/24/2020 32:20-23)

*Policy:*            12(b)(3)    *Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes, and other natural features.*

Petitioner states that the project would alter the Petition Area's present visual appearance and forest character (Pet. Ex. 6, Pg.4-98). This proposal will destroy the natural scenic beauty of the petition area (Welch, Tr., July 22, 2020, 85:17-18). The project includes grading of 33.6 acres (Pet. Ex. 6, Pg.2-31), and a majority of the western hillside will be excavated to achieve height reductions between 40 and 100 feet (Hirota Tr. June 10, 2020 37:17-22).

**§226-13 Objectives and policies for the physical environment--land, air, and water quality.**

*Policy:*            13(b)(5)    *Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters.*



Flooding is possible in the petition area, as a majority of the petition area is in the Zone D, or “undetermined” FIRM Flood Zone, where “flooding is possible” (Pet. Ex. No. 6, Pg.3-25).

There is risk of rockfall in the Petition Area. In Geolabs’ rockfall simulation for the Cultural Preserve area (Slope Profile E), approximately 86% of the simulated rockfalls involving boulders of 3 and 5 feet in dimension could pass below the Preserver’s upslope area. (Lim Tr. January 22, 2020 222:23-223:2; Pet. Ex. 34, Pgs. 2-3).

There is insufficient information about the proposed retention / detention basins to determine if they are sufficient to protect the downstream homes from flooding. (Higham Tr. July 22, 2020, 142:20-24)

**§226-52 Statewide planning system.**

*Policies: 52 (a)(4) (a) The statewide planning system shall consist of the following policies, plans, and programs: (4) County general plans that shall indicate desired population and physical development patterns for each county and regions within each county. In addition, county general plans or development plans shall address the unique problems and needs of each county and regions within each county. County general plans or development plans shall further define the overall theme, goals, objectives, policies, and priority guidelines contained within this chapter. State functional plans shall be taken into consideration in amending the county general plans;*

The proposed development does not conform with the Ko‘olaupoko Sustainable Communities Plan on plan on a couple of points.

The KSCP states that any proposed expansion by Hawaiian Memorial Park must include



a 150-foot buffer from residential homes, a 2,000-foot buffer from the Pohai Nani senior living community (City. Ex. Ko'olaupoko Sustainable Communities Plan, Page 3-19).

While the 150-foot buffer is being honored for residential homes, the City's Acting Planning Division Chief observed that the proposed expansion is only about 1,350 feet away from the Pohai Nani senior living community when measured from the PN parcel boundary and about 1,700 feet from the PH residential tower. And that in addition, as the 2,000 foot buffer guidelines was established to address concerns of the PN community with respect to the proximity of burials to their residences, the proposed cultural preserve where traditional Hawaiian burials are being sought is only 1,400 feet from the PN tower. (Pet. Ex. 6 Appx A-2, Dina Wong letter).

The proposed project violates the Ko'olau Poko Sustainable Communities Plan (KSCP) on Section 3.1.3 Elements of Open Space Resources with regard to above-grade structures. For cemeteries, the KSCP states "where located in the State Conservation District or in preservation area designated by this Plan, above-grade structures shall be limited to maintain the open space character of the cemetery."

Petitioner testified that structures observed at the Ocean View Garden would be the extent of the structural elements, and that gazebos could be in the expansion area.

Director Sokugawa testified that "the Ko'olaupoko Sustainable Communities Plan has a condition about limitations of above-grade structures to markers of modest size and necessary support structures. The gazebos for the cemetery expansion is not in keeping with that provision" (Sokugawa Tr. June 24,2020, 215:11-15).

**§226-104 Population growth and land resources priority guidelines.**

- Priority Guidelines:*
- 104(b)(10) Identify critical environmental areas in Hawai'i to include but not be limited to the following: watershed and recharge areas; wildlife habitats (on land and in the ocean); areas with endangered species of plants and wildlife; natural streams and water bodies; scenic and recreational shoreline resources; open space and natural areas; historic and cultural sites; areas particularly sensitive to reduction in water and air quality; and scenic resources.*
  - 104(b)(13) Protect and enhance Hawaii's shoreline, open spaces, and scenic resources.*

These guidelines apply to the Petition Area, as the Petition Area is within the Kāwā stream watershed (Pet. Ex. 6 Appx O Pg. 2). In addition, portions of the Lipalu Channel are likely Federal Jurisdictional Waters under both the Clean Water Rule and the re-codified pre-existing Clean Water Act rules as it is a tributary to Kāwā stream, which discharges into Kāne'ohe Bay (Pet. Ex. 37 Pg.5). In addition, area contains 24 historic sites (Pet. Ex. 6 Appx J, Pg.52), nine of which would be lost to grading for the proposed project (Thurman, Tr. 6/24/2020 32:20-23).

- Priority Guideline:*
- 104(b)(12) Utilize Hawaii's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations.*

The petition area is currently in the State Conservation District and this policy calls for using limited land resources wisely while ensuring the availability of conservation lands for future generations. Petitioner has shown that there will be a

SURPLUS of burial spot inventory through 2040 (Pet. Ex. 59). The permanent conversion of precious Conservation lands for additional burials is not warranted.

106. The reclassification of the Petition Area does not conform to the policies and objectives of the State Historic Preservation Functional Plan and the State Conservation Lands Functional Plan.

CONFORMANCE WITH THE OBJECTIVES AND POLICIES OF THE COASTAL ZONE MANAGEMENT PROGRAM

107. The proposed action directly conflicts to several objectives and policies of the Coastal Zone Management Program as described in Section §205A-2, HRS, Part I.

*(2) Historic resources; (A) Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.*

The Archeological Inventory Survey identified 24 historic sites. Documented traditional Hawaiian sites include heiau, potential ceremonial sites, habitation sites and complexes, terraced hillsides, and terraced ‘auwai. Heiau and potential ceremonial sites include Kawa‘ewa‘e Heiau, a walled enclosure, a hilltop with associated stone alignments, and a potential Hale o Papa. (Pet. Ex. 6 Appx J, Pg.52).

This project is contrary to this policy as nine of the sites are within the proposed area for cemetery expansion and will be destroyed by grading. (Thurman, Tr. 6/24/2020 32:20-23)



*(3) Scenic and open space resources; (A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.*

This proposal destroys the natural scenic beauty of the petition area (Welch, Tr., July 22, 2020, 85:17-18). The project includes grading of 33.6 acres (Pet. Ex. 6, Pg.2-31), and a majority of the western hillside will be excavated to achieve height reductions between 40 and 100 feet (Hirota Tr. June 10, 2020 37:17-22).

CONFORMANCE WITH THE KO'OLAUPOKO SUSTAINABLE COMMUNITIES PLAN

Ko'olaupoko Sustainable Communities Plan

108. The proposed project violates the Ko'olaupoko Sustainable Communities Plan (KSCP) on Section 3.1.3 Elements of Open Space Resources. The KSCP states that any proposed expansion by Hawaiian Memorial Park must include a 150-foot buffer from residential homes, a 2,000-foot buffer from the Pohai Nani senior living community (City. Ex. Ko'olaupoko Sustainable Communities Plan, Page 3-19).

While the 150-foot buffer is being honored for residential homes, the City's Acting Planning Division Chief observed that the proposed expansion is only about 1,350 feet away from the Pohai Nani senior living community when measured from the PN parcel boundary and about 1,700 feet from the PH residential tower. And that in addition, as the 2,000 foot buffer guidelines was



established to address concerns of the PN community with respect to the proximity of burials to their residences, the proposed cultural preserve where traditional Hawaiian burials are being sought is only 1,400 feet from the PN tower. (Pet. Ex. 6 Appx A-2, Dina Wong letter).

In addition, Councilmember Kymberly Pine submitted letter to the State Land Use Commission stating, "The Council's intent was to set the buffer at 2000 feet from the Pohai Nani property line, and 150 feet from the residential property line". (Int. Ex. 7).

109. The proposed project violates the Ko'olau Poko Sustainable Communities Plan (KSCP) on Section 3.1.3 Elements of Open Space Resources with regard to above-grade structures. For cemeteries, the KSCP states "where located in the State Conservation District or in preservation area designated by this Plan, above-grade structures shall be limited to maintain the open space character of the cemetery."

Petitioner testified that structures observed at the Ocean View Garden would be the extent of the structural elements, and that gazebos could be in the expansion area.

Director Sokugawa testified that "the Ko'olaupoko Sustainable Communities Plan has a condition about limitations of above-grade structures to markers of modest size and necessary support structures. The gazeboes for the cemetery expansion is not in keeping with that provision" (Sokugawa Tr. June 24,2020, 215:11-15).

## CONCLUSIONS OF LAW

1. Pursuant to Chapter 205, HRS, and the Hawai'i Land Use Commission Rules under Chapter 15-15, HAR., and upon consideration of the Land Use Commission decision-making criteria under Section 205-17, HRS, this Commission finds upon a clear preponderance of evidence that the reclassification of the Property consisting of approximately 53.449 acres of land situated at Kāne'ōhe, Ko'olau Poko, O'ahu, Hawai'i, O'ahu Tax Map Key No. 4-5-33: por. 01, from the Conservation Land Use District to the Urban Land Use District, is not reasonable, does not conform to the standards for establishing the urban district boundaries, is violative of Section 205-2, HRS, and is not consistent with the Hawai'i State Plan as set forth in Chapter 226, HRS.

2. HAR §15-15-77 states that the District Boundary Amendment must be "non violative of section §205-2 HRS, and consistent with the policies and criteria established pursuant to sections §205-16, §205-17, and §205A-2 HRS". HRS §205-17-5 states that "The county general plan and all community, development, or community development plans adopted pursuant to the county general plan," must be considered. The petition does not conform with the Ko'olaupoko Sustainable Communities Plan, and thus does not conform to HAR §15-15-77, and HRS §205-17-5.

3. HRS §205-17-3 states the Land Use Commission shall specifically consider the impact of the reclassification on the maintenance of valued

cultural, historical, or natural resources. The Kawa'ewa'e Heiau Complex and its associated sites are an extremely valued cultural and historical resource requiring protection, nine sites of which will be destroyed with the proposed expansion.

4. The Petition for Boundary Amendment conflicts with the State Supreme Court decision on "Ka Pa'akai O Ka Aina versus the Land Use Commission."

a. Neither a Resource Management Plan nor a Preservation Plan has been submitted to the Commission to review and to independently assess the impacts of the proposed reclassification on such customary and traditional practices.

b. There has been no written agreement with parties for establishing a conservation easement, or for the management of the cultural preserve. Without such agreements and responsibilities defined, the Commission will again be unable to evaluate the extent to which the traditional and customary native rights will be affected by action. The Petitioner is asking the Commission to delegate the Commission's responsibility for the preservation and protection of native Hawaiian rights to the Petitioner.

5. Without the District Boundary Amendment, Cultural Practitioners would be able to maintain the cultural and historic resources under the current allowable uses of the General Conservation District HAR §13-5.

6. HAR §13-5-12 The objective for the limited subzone is to limit uses where natural conditions suggest constraints on human activity. This includes lands necessary for the protection of the health, safety, and welfare of the public by reasons of the land's susceptibility to landslides, or which have general slope of forty percent or more. The proposed petition area indicates need to maintain the limited subzone, due to risk of rockfall and flooding

7. Instead of a District Boundary Amendment, a Conservation District Use Permit via §13-5-31 HAR, would allow cultural practitioners to perform traditional Hawaiian burials without a District Boundary Amendment.

8. The proposed development is contrary the State of Hawai'i State Constitution Article XI, Section 1, in that it does not conserve and protect Hawaii's natural beauty and all natural resources.

9. The proposed development is also contrary to the State of Hawai'i State Constitution Article XI, Section 1, as the Petitioner has not proven the need for additional burial space, and is not able to quantify the percentage of revenue from the proposed development which would remain in the State, the proposed project does not promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.



DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition for reclassification is denied and that the property being the subject of Docket No. A17-804, filed by Hawaiian Memorial Life Plan consisting of approximately 53.449 acres of land at Kāneʻohe, Koʻolau Poko, Oʻahu , Hawaiʻi , Oʻahu , identified as Tax Map Key No. 4-5-33:01, shall hereby remain in the Conservation Land Use District

DATED: Honolulu, Hawaiʻi , August 26, 2020.



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GRANT YOSHIMORI  
Intervenor Pro Se

HUI O PIKOILOA, an unincorporated association,  
LIANNE CHING, BETTYE HARRIS, RICHARD MCCREEDY,  
JULIANNE MCCREEDY, JESSE REAVIS, and  
GRANT YOSHIMORI  
c/o 45-464 Lipalu Street  
Kaneohe, HI 96744  
Telephone No.: (808) 236-0502

INTERVENORS PRO SE

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

IN THE MATTER OF: ) DOCKET NO. A17-804  
)  
HAWAIIAN MEMORIAL LIFE PLAN, LTD., )  
a Hawaii Corporation ) CERTIFICATE OF SERVICE  
)  
To Amend The Conservation Land Use District )  
Boundary Into The Urban Land Use District )  
For Approximately 53.449 Acres Of Land At )  
Kāneʻohe, Island of Oahu, State of Hawaiʻi, )  
Tax Map Key: (1) 4-5-003:por.001 )  
)  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that due service of a copy of the within document was made by  
depositing the same with the U. S. mail, postage prepaid, by hand delivery, or by email, on  
August 26, 2020, addressed to:

MARY ALICE EVANS  
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DATED: Honolulu, Hawaii, August 26, 2020.



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GRANT YOSHIMORI, ET. AL.

Intervenors